IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

Crl.MC.No. 1672 of 2007()

CRMP.4293/2005 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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PETITIONER: COMPLAINANT

JAYACHANDRAN.P.R., AGED 36 YEARS,
PROPRIETOR, ACE GROUP OF INSTITUTIONS,
MAHESWARY BUILDING, THRISSUR, S/O.RAMAN,
PUNCHAPARAMBIL HOUSE, T.C.50/1600, K.T.ROAD,
AYYANTHOLE, THRISSUR.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS: STATE AND ACCUSED

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. BHANUDAS.K., S/O.CHAMI.K.,
`SREYAS', PLATHARA, CHUNANGADU P.O.,
OTTAPALAM, PALAKKAD.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1672 OF 2007

Dated this the 11th day of June, 2007

ORDER

The petitioner had filed two private complaints against two different individuals both making allegations under Sec.138 of the Negotiable Instruments Act in both cases. In one, the accused was Bhanudas – the 2nd respondent herein. In the other, the accused was one Rajesh.

2. The dispute with the Rajesh was settled. The petitioner filed an application for withdrawal of the case under Sec.257 of the Cr.P.C. Both cases were pending before the learned Chief Judicial Magistrate as M.Ps. as cognizance had not been taken. When the application under Sec.257 of the Cr.P.C. was filed, the Crl.M.P. number was shown wrongly. Crl.M.P.No.4293/05 is really the number of the case in which Bhanudas - the 2nd respondent herein is the accused. But in the withdrawal application to withdraw the case against

Rajesh, the number was shown wrongly as Crl.M.C.No.4293/05. The learned Chief Judicial Magistrate granted permission for withdrawal in Crl.M.P.No.4293/05. That was the case against the 2nd respondent herein. Thus, the 2nd respondent herein received an unjustified dismissal of the complaint against him on account of the wrong quoting of the Crl.M.P. Number, even though the name of the accused was correctly shown in such application. The petitioner now finds himself in a very unsatisfactory situation. He has settled the dispute with Rajesh and filed an application for withdrawal. He had not settled the dispute with Bhanudas. Bhanudas has now obtained an acquittal. It is submitted that later, the case against Rajesh has been closed and withdrawn.

3. So the resultant incongruity is that though the case against the 2nd respondent has not been withdrawn, on account of the erroneous number shown, the case against the 2nd respondent has been closed. The petitioner has come to this Court with a prayer that such anomaly/incongruity may be redressed.

4. The 2nd respondent has not so far appeared before the learned Chief Judicial Magistrate, it is submitted. A report of the learned Chief Judicial Magistrate was called for. The report

confirms the facts referred above.

5. The 2nd respondent has thus secured and the petitioner has suffered an unjustified termination of the proceedings initiated against the 2nd respondent as Crl.M.P.No.4293/05. The same deserves to be corrected invoking the extraordinary inherent jurisdiction of this Court under Sec.482 of the Cr.P.C. Of course, the petitioner was also, in part, responsible in that he had shown the incorrect number in the application for withdrawal under Sec.257 of the Cr.P.C. That inadequacy notwithstanding, I am satisfied that the prayer can be allowed.

6. In the result:

(a) This Crl.M.C. is allowed.

(b) The impugned order in Crl.M.P.No.4293/05 (a copy of the order is produced as Annexure-D) is hereby set aside.

(c) The learned Chief Judicial Magistrate shall now dispose of Crl.M.P.No.4293/05 afresh in accordance with law.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge